

IDEM

Nonrule Policy Document

Indiana Department of Environmental Management
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Title: No Smoking Signs at Generators

Identification Number: WASTE-0020-NPD

Date Originally Adopted: October 14, 1997

Dates Revised: None

Other Policies Repealed or Amended: None

Citations Affected: 40 CFR 265.17(a); 40 CFR 262; 40 CFR 265.176

Brief Description of Subject Matter:

This nonrule policy document is intended solely as guidance and does not have the effect of law or represent formal Indiana Department of Environmental Management (IDEM) decisions or final actions. This nonrule policy document shall be used in conjunction with applicable laws. It does not replace applicable laws, and if it conflicts with these laws, the laws shall control. A revision to this nonrule policy document may be put into effect by IDEM once the revised nonrule policy document is made available for public inspection and copying. IDEM will submit revisions to the Indiana Register for publication.

NO SMOKING SIGNS AT GENERATORS

This policy addresses the application of 40 CFR 265.17(a) to Large Quantity Generators of hazardous waste. Treatment, Storage and Disposal facilities (TSD's) are subject to 40 CFR 265.17(a) by direct regulatory citation. However, Standards Applicable to Generators of Hazardous Waste, 40 CFR 262, only references 40 CFR 265.176, which merely contains a regulatory comment referring to 265.17(a).

40 CFR 265.176 states:

"Containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility's property line.

[Comment: See § 265.17(a) for additional requirements.]"

40 CFR 265.17(a) states:

"... 'No Smoking' signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste."

U.S. EPA, Region V has issued an opinion¹ that states: "Existing case law confirms the status of 'comments' and 'notes' in a statute as commentary, and not a legal requirement ..." U.S. EPA concludes that "...on the basis of existing case law, the Indiana Department of Environmental

¹ Letter from T. Leverett Nelson and Thad Slaughter, U.S. EPA, Region V, to Rosemary Cantwell, IDEM, Office of Enforcement (received July 15, 1995).

Management cannot use the comment following 40 CFR §265.176 ... to require a generator to comply with 40 CFR §265.17(a)...

Therefore, IDEM will not cite deficiencies of 40 CFR 265.17(a) at a generator not otherwise subject to that requirement. It is suggested that inspectors recommend the placement of “No Smoking” or other signs that warn of the potential hazards that ignition sources may pose to ignitable or reactive waste.

The Indiana Fire Protection Code and OSHA regulations may provide for the placement of “No Smoking” signs under specific conditions. Referrals to enforce these regulations may be made to the State Fire Marshal or IOSHA on a case-by-case basis.

If you need additional information, or have any questions or concerns, please contact staff of the Compliance and Response Branch, Office of Land Quality at 317/308-3103. The IDEM toll-free telephone number is 1-800-451-6027.